LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
DEC 31 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-684

PACIFIC MARITIME ASSOCIATION AND INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION AND ITS LOCALS 13, 63, 10, AND 34, *Petitioners*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*
PACIFIC MOTOR TRUCKING CO. AND CALIFORNIA CARTAGE COMPANY, INC., *Intervenors*

BRIEF OF INTERVENOR PMT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the District of Columbia Circuit

---

JAMES H. PIPKIN, JR.
MARTIN D. SCHNEIDERMAN
SAMUEL T. PERKINS
STEPTOE & JOHNSON
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
Attorneys for Intervenor
Pacific Motor Trucking Co.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

SUBJECT INDEX

Page

QUESTION PRESENTED 1

COUNTERSTATEMENT OF THE CASE 2

I. Parties and Proceedings Below 2

II. Factual Background 3

REASONS FOR DENYING THE WRIT 8

I. The Decision in This Case Does Not Conflict With Prior Decisions of This Court. 8

II. The Decision Below Creates No Conflict with Decisions of Other Circuits. 11

CONCLUSION 14

TABLE OF AUTHORITIES

CASES:

American Boiler Manufacturers' Association v. NLRB, 404 F.2d 547 (8th Cir. 1968), *cert. denied*, 398 U.S. 960 (1970) 12

Canada Dry Corporation v. NLRB, 421 F.2d 907 (6th Cir. 1970) 12

Humphrey v. International Longshoremen's Association, — F.Supp. —, 90 LRRM 2838 (E.D. Va. 1975). 13

International Longshoremen's Association (Consolidated Express, Inc.) NLRB Case No. 22-CC-541 (1974), *rev'd* 221 NLRB No. 144 (Dec. 4, 1975) ... 13

Meat and Highway Drivers, Local 710 v. NLRB, 335 F. 2d 709 (D.C. Cir. 1964) 12

National Woodwork Manufacturers Association v. NLRB, 386 U.S. 612 (1967) 8, 9, 10, 11, 14

Universal Camera Corporation v. NLRB, 340 U.S. 474 (1951) 10

STATUTES:

National Labor Relations Act, as amended, Sections 8(b)(4)(i), (ii)(B), and (e), 29 U.S.C. §§ 158(b)(4)(i), (ii)(B), and (e) (1970) 2, 3, 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-684

PACIFIC MARITIME ASSOCIATION AND INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION AND ITS LOCALS 13, 63, 10, AND 34, *Petitioners*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*
PACIFIC MOTOR TRUCKING CO. AND CALIFORNIA CARTAGE COMPANY, INC., *Intervenors*

BRIEF OF INTERVENOR PMT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the District of Columbia Circuit

---

QUESTION PRESENTED

Whether the court of appeals erred in finding that there was substantial evidence to support the NLRB's decision that the agreements between petitioners were

for the purpose of effecting an unlawful secondary objective, in violation of Sections 8(b)(4) and (e) of the National Labor Relations Act, since these agreements were tactically calculated to take for petitioner ILWU work not traditionally its own.[1]

COUNTERSTATEMENT OF THE CASE

I. Parties and Proceedings Below

In late 1971, Pacific Motor Trucking Co. (PMT) and California Cartage Co., Inc. (Cal Cartage) filed charges with the National Labor Relations Board against the ILWU and the PMA. The charges alleged that the Container Freight Station Supplement (1970 and 1972 CFS Supplements) agreements between PMA and ILWU to refuse to handle containers "stuffed" (packed) or "unstuffed" (unpacked) by PMT or Cal Cartage employees, constituted violations of Sections 8(b)(4)(i), (ii) (B) and (e) of the National Labor Relations Act (Act), 29 U.S.C. §§ 158(b)(4)(i), (ii) (B), and (e).

Complaints were issued by the General Counsel of the NLRB and heard before an Administrative Law Judge (ALJ).[2] A decision was issued by the ALJ on

---

[1] References to the decision of the court of appeals will be directed to Appendix A to the Petition and will be cited as "App. A. at ——." References to the decision of the National Labor Relations Board will be directed to Appendix B to the Petition and will be cited as "App. B at ——." References to the Petition and the Supplemental Petition will be cited as "Pet. at ——" and "Supp. Pet. at ——."

[2] Initially, the charge focused on the 1970 CFS Supplement. After the hearing, PMT and Cal Cartage filed additional charges, based on an agreement between the ILWU and PMA of February 10, 1972 (1972 CFS Supplement) which included the 1970 CFS Supplement in a modified form. The NLRB then issued a consolidated

October 19, 1972, finding that the PMA and ILWU had violated Section 8(b)(4) and (e) of the Act by entering into, maintaining, and enforcing the provisions of the 1970 and 1972 CFS Supplements.

Subsequent to the filing of exceptions, the full NLRB unanimously affirmed the ALJ's decision and adopted his recommended order.[3] The present petitioners then appealed to the United States Court of Appeals for the District of Columbia Circuit. On a cross-petition to enforce the order, the court of appeals upheld the NLRB without opinion.[4]

II. Factual Background

The jurisdiction of longshoremen historically has been defined in terms of location—namely the docks. The work of longshoremen involves principally the loading and unloading of ships and other incidental functions performed *at the docks*. Yet, through the device of the CFS Supplements to the PMA-ILWU Pacific Coast Longshore and Clerk's Agreement, ILWU sought to acquire the off-dock work of stuffing and stripping containers, work which traditionally had been done by teamsters and others not members of the ILWU-PMA bargaining unit. A brief review of the history of cargo handling and the growth of container freight stations places the non-longshoreman work tradition in clear perspective.

---

complaint. The ALJ then reopened the proceeding, consolidating both the new complaint and additional complaints based on charges brought by International Cargo Services, Inc. and Richmond Export Services, Inc.

[3] App. B. The NLRB slightly modified the ALJ's findings of law. *Id.* at xiii-xv.

[4] App. A.

History. As early as the 1940s, teamsters had important work functions relating to the packing and unpacking of cargo. Usually, outbound cargo was delivered to the dock area by truck at which time the truck driver unloaded or stripped the cargo from the truck in loose or in palletized form, onto the "skin of the dock."[5] The "skin of the dock," so to speak, defined the jurisdiction of longshoremen who would then reload the cargo on their own pallets for transfer for storage on shipboard.[6] This process was reversed for inbound cargo.[7]

The normal practice, therefore, involved substantial duplication of work. On outbound shipments, teamsters would unpack cargo from trucking pallets at the skin of the docks only to be repacked onto shipping pallets by longshoremen, and, on inbound cargo, the reverse of this process applied. However, in 1960, PMA and ILWU entered into a Mechanization and Modernization Agreement in which the ILWU, in exchange for substantial benefits and guarantees, agreed to eliminate make-work practices such as repalletization of cargo. The Agreement stated that cargo on pallet or other forms of unitized cargo or loads "shall not be rehandled" on receipt to or discharge from the dock. Thereafter, palletized and other forms of "unitized" cargo stuffed and delivered by teamsters was loaded

---

[5] Transcript of Proceedings before NLRB in this case (hereinafter Tr.) 65, 577-78, 666-71.

[6] Tr. 65, 577-78, 670-71, 805-06, 1213.

[7] Tr. 109-11, 578-79. During this early period, there were some forms of containers used for handling special cargo which involved stuffing and stripping work by teamsters without rehandling by longshoremen. Tr. 844, 641, 681, 700.

directly aboard ships and discharged from the skin of the dock without rehandling by longshoremen.

During the late 1950s and 1960s, both teamster and longshore handling of cargo at dockside began to be affected by the advent of the modern containers.[8] Many shipping lines constructed new, fully containerized ships. The containers differed from earlier cargo units in both size and design. They were at least 20 feet long and more often 24 or 40 feet (Tr. 69, 86, 88). Rather than being loaded into a truck, these containers actually were the truck-trailer van and would merely be unloaded from a chassis and power unit to be hoisted aboard ship (Tr. 344-47).

By their design, container ships require that all cargo of the shipper be containerized. From the very beginning, the steamship companies have contracted with trucking companies, such as PMT, for the purpose of establishing off-dock Container Freight Stations (CFS), at which locations trucking employees would stuff and strip containers, warehouse, and distribute freight (Tr. 119-20).

In 1959, PMT established a Container Freight Station to perform stuffing and stripping for the first container ship—the Matson *Hawaiian Citizen*. Throughout the 1960s, the Container Freight Station work of PMT, as well as the CFS business of the other trucking companies, increased substantially with the growth of container ships. By the end of the 1960s, various

---

[8] Increased mechanization in shipping affected teamsters as well as longshoremen. Containerization and other forms of unitized cargoes resulted in a decrease in the need to pack and unpack cargoes from the original point of load to the ultimate destination. *See, e.g.*, Tr. 157, 449-450, 462, 982-83.

trucking companies operated over thirty Container Freight Stations in the Los Angeles/Long Beach areas using teamster labor (Tr. 216, 220, 223). Significantly, there were no Container Freight Stations manned by longshoremen prior to the execution of the CFS Supplement in 1970 (Tr. 746-48, 946; *see also* App. B at viii). PMA members did operate two container freight stations that were manned by non-longshore employees known as terminal warehousemen who were not part of the PMA-ILWU longshoremen bargaining unit.[9]

The CFS Supplements. In the face of the universal practice of stuffing and stripping containers at container freight stations manned by teamsters or others not within the ILWU-PMA longshoremen bargaining unit, ILWU and PMA in the 1970 Container Freight Station Supplement agreed that all container stuffing and stripping work, other than shipper's loads and door-to-door deliveries, was to be brought to the dock where it would be performed exclusively by ILWU members (App. B at ix). A "transition period" was provided in order to allow PMA members "additional necessary time to build, lease or provide for a new facility" for a Container Freight Station using ILWU members.[10]

An objective to benefit the ILWU generally and non-bargaining unit union members (terminal warehousemen) in particular is apparent from the terms of the

---

[9] Tr. 961, 1010-12, 1194-95. Terminal Warehousemen are not full longshoremen, and, though members of ILWU, work as an entirely separate unit from Class A and B longshoremen. Tr. 964, 1066, 1250.

[10] General Counsel's Exhibit 2(C), Section 1.51. General Counsel's Exhibits will hereinafter be cited as G.C. Ex. ——. *See also* App. B at ix.

Supplement. The 1970 Supplement created new employee job descriptions of "CFS Utilitymen" and "CFS Clerks", who were to perform all types of work at the CFS, including stuffing and unstuffing of containers under terms of employment entirely different from regular longshoremen, but similar to those of terminal warehousemen. These employee classifications were to work exclusively in the CFS, and were absolutely restricted from transfer "to longshore work outside the CFS under the terms of any of the Agreements." Similarly, non-CFS longshoremen were permitted to perform work related to the CFS only under very narrowly defined circumstances.[11]

On February 10, 1972, the ILWU and PMA implemented a new Container Freight Station Supplement.[12] The 1972 Supplement modified the 1970 Supplement by adding a "container tax" of $1.00 per ton on non-ILWU stuffed or unstuffed containers, which was to be allocated to the Union's Pay Guarantee Plan.[13] In addition, the 1972 Supplement expressly mandated that "PMA members shall discontinue their past practice" of utilizing companies not party to the PMA/ILWU Agreements for the stuffing and unstuffing of containers, but authorized a 90 day grace period for the employers "to build, expand, lease, equip, or provide facilities . . . ." [14]

The enforcement of these Supplements, effecting a boycott of containers stuffed or to be stripped by PMT

---

[11] G.C. Ex. 2(C), Sections 1.23 and 1.3-1.32.

[12] G.C. Ex. 3, Appendix A.

[13] *Id.*, Section 1.53.

[14] *Id.*, Section 1.57.

and Cal Cartage, led to the filing of charges and subsequent legal proceedings below. Based on the above facts, the NLRB rendered an opinion that the CFS Supplements were tactically calculated to benefit the ILWU generally and sought to acquire work that had not been traditionally the work of the union. Finding these Supplements violative of Sections 8(b)(4) and 8(e) of the Act, the NLRB issued an order that the petitioners cease and desist from maintaining or implementing the Supplements. The court of appeals found the Board's decision to be supported by substantial evidence and enforced the order of the NLRB.

REASONS FOR DENYING THE WRIT

I. The Decision in This Case Does Not Conflict with the Prior Decisions of This Court.

In seeking a Writ of Certiorari, petitioners have attempted to construct a conflict between the decision below and this Court's ruling in *National Woodwork Manufacturers Association* v. *NLRB,* 386 U.S. 612 (1967). No such conflict exists. In fact, quite to the contrary, the decision in this case conforms to and properly applies the guidelines set forth in *National Woodwork* for determining whether a boycott provision is permissible work preservation or unlawful secondary work acquisition.

In evaluating such boycott provisions, this Court in *National Woodwork* laid down a standard calling for consideration of "all the surrounding circumstances" to determine whether the Union's objective was work preservation or whether the agreement and the boycott were tactically calculated to satisfy general union objectives. The Court pointed to such circumstances as the history of labor relations, the economic personality

of the industry and the threat of displacement by the banned product or services. 386 U.S. at 644 n.38. It was recognized that the difference between primary work preservation and unlawful secondary work acquisition might involve difficult factual determinations:

> There need not be an actual dispute with the boycotted employer . . . for the activity to fall within this [prohibited] category . . . . The touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer *vis-a-vis* his own employees. This will not always be a simple test to apply. [*Id.* at 645 (footnotes omitted).]

In *National Woodwork*, the NLRB had determined, in light of the facts of the case, that the objective and effect of the agreement in question was work preservation and not secondary work acquisition. This Court found the NLRB's decision to be supported by substantial evidence. In the present case, however, the Board found that the CFS Supplements had an unlawful secondary purpose and effect. The record below contains substantial, if not overwhelming, evidence that the CFS Supplements at issue were devices for expanding ILWU's general work opportunities by forcing to the docks work that had traditionally been performed at non-waterfront Container Freight Stations by non-ILWU labor.

The absence of legitimate work preservation objectives is also demonstrated by the fact that the Supplements established a wholly new work unit of new employee classifications working under entirely different terms of employment than otherwise apply to longshoremen. The record contains substantial evidence that, rather than preservation of any existing long-

shore jobs, the Supplements in purpose and effect benefited the ILWU membership in general and non-longshoreman "terminal warehousemen" in particular.[15]

Based on the NLRB's factual determinations of unlawful secondary activity, which findings are clearly supported by substantial evidence, this case falls well within the teachings of *National Woodwork*.[16] The relevant factual circumstances were considered and the correct conclusions reached.

Petitioners have contended that the NLRB improperly considered the severity of the potential impact of the 1970 and 1972 CFS Supplements upon other employers and employees in declaring them invalid.[17] However, such an investigation by the Board was clearly within the contemplation of *National Woodwork*. In delineating the "surrounding circumstances" to be considered in an inquiry as to whether a particular agreement had as its objectives work preservation or the satisfaction of "union objectives elsewhere," the Court there listed "the economic personality of the in-

---

[15] *See* note 9, *supra*, and related text.

[16] *See* Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951).

[17] For example, the NLRB noted the following:

> [I]t is clear from the language of the Supplements that the ILWU's claim to container stuffing work . . . extends broadly to all containers entering or leaving Pacific coast docks, whether or not the owners of the containers are members of PMA and statutory employers of employees within the longshore unit represented by ILWU.
>
> • • • •
>
> While the ILWU does not now seek all container work, the logic of its position is that it is legally entitled to all such work without regard to the identity of the competing employees. Obviously, a boycott to enforce a claim to stuff shippers' loads and door-to-door deliveries would have an enormous impact on the shipping industry. [App. B. at x, xiii.]

dustry" (389 U.S. at 644 n. 38). The latter phrase obviously encompasses the potential economic effect of a boycott on other employers and employees within the industry.

Petitioners also assert that the NLRB's decision contravenes *National Woodwork* in that "an agreement to assign the technological successor of what has been traditional work is also valid work preservation." [18] However, this case involves no such "technological successor" work. The NLRB found, on the basis of extensive evidence, that the work which the ILWU coveted had been performed by teamster labor since prior to World War II.

Similarly, petitioners argue that the loss in longshore opportunities due to general technological changes should permit ILWU to capture work which ILWU members never lost. Such an argument would provide limitless justification for work acquisition and is not supported by *National Woodwork* or any other authority.[19]

II. The Decision Below Creates No Conflict with the Decisions of Other Circuits.

Petitioners also claim that the decision in this case is in conflict with other cases decided by the courts of appeals. Specifically, petitioners contend that the NLRB failed to consider the doctrines of "work recapture" and "fairly claimable work." As support,

---

[18] Pet. at 25.

[19] As Mr. Justice Harlan noted in his memorandum supporting the majority opinion in *National Woodwork:*

> This, then, is not a case of a union seeking [a] . . . boycott, for the purpose of acquiring for its members work that had not previously been theirs. [386 U.S. at 648.]

they cite several cases decided on grounds of those doctrines.[20]

This attempt to create conflict where none exists also must fail. Each of the cases cited by petitioners was decided on its own facts, which in each instance are inapplicable to the present case. In short, there is no conflict with any decision of another circuit.

Thus, *American Boiler Manufacturers' Association* v. *NLRB*, 404 F.2d 547 (8th Cir. 1968), *cert. denied*, 398 U.S. 960 (1970), and *Meat & Highway Drivers, Local 710* v. *NLRB*, 335 F.2d 709 (D.C. Cir. 1964), stand for the proposition that labor-management agreements can legitimately provide for the reacquisition of traditional unit work which has been partially lost. No such issue is involved in this case. The stuffing of containers away from the dock area at container freight stations was not the traditional work of the ILWU. The ILWU was attempting to extend its jurisdiction to an area where it had no traditional work. Under those circumstances, the issue of work recapture does not rise.

The cases relying on the concept of "fairly claimable work" are equally inapplicable here. For example, *Canada Dry Corp.* v. *NLRB*, 421 F.2d 907 (6th Cir. 1970), involved work which was identical, in kind and location, to that being performed contemporaneously by the retail clerks' union members.[21] Moreover, the record in that case showed that the clerks had previously performed shelving tasks with respect to the brand name goods in issue. 421 F.2d at 909. None of the cases under the "fairly claimable" doctrine involves the establishment of new classifications to

---

[20] Pet. at 27-34.

[21] *See* Pet. at 31.

perform newly acquired work under entirely different terms and conditions of employment. None of the cases involve such a patent use of negotiating leverage by a union to acquire work that was never its own.

In this case, the ALJ considered the "work recapture" and "fairly claimable" doctrines and found them inapplicable under the circumstances. The NLRB, quite properly, adopted the findings of the ALJ in this regard. The argument of petitioners, that the NLRB failed to consider and apply these principles, is wholly without basis.

Finally, petitioners contend that the decision below permits a different legal standard to apply for the performance of container work on the East Coast and on the West Coast of the United States.[22] In making this argument, petitioners rely upon the decision of an administrative law judge in *International Longshoremen's Association (Consolidated Express, Inc.)*, NLRB Case No. 22-CC-541 (1974), and the recent district court decision in *Humphrey* v. *International Longshoremen's Association*, — F. Supp. —, 90 LRRM 2838 (E.D. Va. 1975). These cases, however, do not provide support for petitioners' contention. The former decision was reversed on appeal, with the NLRB holding that the East Coast agreements on container work (similar to those in this case) constituted secondary work acquisition and not work preservation. 221 NLRB No. 144 (Dec. 4, 1975). The latter case involved a request for injunctive relief pending resolution by the NLRB. It was based on different facts, different bargaining history, and a different collective bargaining agreement than the instant case.

---

[22] Supp. Pet. at 7.

In summary, the central issue remains whether, through the 1970 and 1972 CFS Supplements, ILWU sought work preservation or unlawful work acquisition to benefit the union generally. Resolution of this issue involves principally factual determinations. The NLRB considered all the facts before it and applied these facts to the legal standards enunciated in *National Woodwork* and other cases. The decision is supported by substantial evidence and should not be disturbed.

CONCLUSION

For reasons set forth above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JAMES H. PIPKIN, JR.
MARTIN D. SCHNEIDERMAN
SAMUEL T. PERKINS
STEPTOE & JOHNSON
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
Attorneys for Intervenor
Pacific Motor Trucking Co.